

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

Robert Earl Council,

Plaintiff

v.

Commissioner John Hamm, in his official capacity, for the Alabama Department of Corrections, Dr. Wendy Williams, in her official capacity, Defendant Edward Ellington, in his official capacity, Warden William Streeter, in his official capacity, Warden Chadwick Crabtree, in his official capacity.

Defendants.

Civil Action No. 2:23-cv-00658

**MOTION FOR A TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION
BY PLAINTIFF ROBERT EARL COUNCIL**

Pursuant to Federal Rule of Civil Procedure 65, Plaintiff Robert Earl Council (“Plaintiff” or “Plaintiff Council”), an incarcerated organizer and leader of the Free Alabama Movement (“FAM”) currently housed in solitary confinement at Limestone Correctional Facility, (“Limestone”) applies for the issuance of a temporary restraining and preliminary injunction against Defendants in their official capacity on behalf of the Alabama Department of Corrections (“ADOC”). Plaintiff Council seeks to enjoin Defendants from violating his First, Eighth, and Fourteenth Amendment rights.

For the reasons set forth in Plaintiff Council’s brief in support [Att. 1] that justify the relief specified in the proposed order [Att. 2], and in light of the attached evidence, *see* Index, *infra*, Plaintiff Council request that the Court enjoin Defendants, from (1) retaliating against Plaintiff Council in violation of the First Amendment, by exposing him to a substantial risk of serious injury from assault or violence, if he remains at Limestone, by Lt. Jeremy Pelzer and

other Limestone officers and inmates acting at Lt. Pelzer's behest, which also violates the Eighth Amendment; and (2) holding Plaintiff Council in solitary confinement, which triggers and exacerbates his PTSD and anxiety in violation of the Eighth Amendment, and denies him due process in violation of the Fourteenth Amendment.

Respectfully submitted, this 13th day of November 2023.

/s/ Andrew Menefee

Andrew Menefee

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INDEX OF ATTACHMENTS AND EVIDENCE 1-8

In addition to this Verified First Amended Complaint, and Plaintiff Council's two declarations [Doc. no. 1-1 & 1-2 (incorporated by reference into this motion)], Plaintiff's Motion relies on the following evidence:

Att. 1 Plaintiff's brief in support of his motion for preliminary relief.

Att. 2 Proposed order for preliminary relief

Att. 3 Plaintiff's November 6, 2023 demand letter, and ADOC's November 8, 2023 email in response.

Att. 4 Affidavit of Larry Jones, inmate who Lt. Pelzer threatened with violence in order to fabricate an enemy-conflict affidavit and keep Plaintiff Council in solitary:

- Lt. Pelzer said "I want Robert Council....I'm tired of this bastard and all his lawsuits," [*id.* at p. 3]
- Lt. Pelzer said he wanted to get Plaintiff Council transferred out of Limestone because of all of his lawsuits, and Larry Jones told Lt. Pelzer "that Robert Earl Council can't transfer ... [Defendant Institutional Coordinator] Cheryl Price got him here." [*Id.* at 4-5].

Att. 5 Declaration of Travis Griggs. Griggs, sitting handcuffed, listened to Sgt. Pelzer provide false testimony at Griggs' disciplinary hearing, and Griggs stated, "[w]hy you sitting there lying? You just mad at the world cause your arms are shorter than everybody else's'." This last remark was an insult directed at Sgt. Pelzer's physical deformity. Sgt. Pelzer hurled himself at Griggs, slamming him to the ground and spraying him with mace.

Att. 6 Plaintiff's then-attorney David Gespass' letters to Defendant Commissioner John Hamm and other top officials requesting transfer of Plaintiff Council away from Limestone due to documented threats of retaliatory violence by Lt. Pelzer, on April 10, 2023 (to Commissioner John Hamm), January 9, 2020, and November 8, 2019.

Att. 7 Plaintiff's February 2022 retaliation complaint about solitary confinement at Limestone.

Att. 8 *Council v. Pelzer et. al.* Case no. 2:20-cv-01439-LSC-JHE, Doc. no. 1, 9/28/2020 Mr. Council's pro se § 1983 complaint with First Amendment retaliation and other claims against Lt. Pelzer.
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